IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.No.10918 of 2005
Date of Decision: 8.5.2007

Harbans Singh Vs. The Financial Commissioner, Appeals-I,Punjab and others

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Present : Mr. R.S. Mittal, Sr.Advocate with MrAtul Gaur, Advocate for the petitioner.
Mr.N.D.S. Mann, Addl.A.G. Punjab.
Mr.M.S. Uppal, Advocate for respondent no.4.

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CORAM : HON'BLE MR.JUSTICE P. SATHASIVAM
HON'BLE MR.JUSTICE RAJIVE BHALLA

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1. Whether Reporters of Local Newspapers may be allowed to see the judgement ?
2. To be referred to the Reporters or not ?
3. Whether the judgement should be reported in the Digest ?

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RAJIVE BHALLA, J

The petitioner, impugns orders dated 18.8.2004 and 30.5.2005, passed by respondents no.2 and 1 respectively.

Applications were invited, for filling up the vacancy for the second post of Lambardar in Village Gagowal. The petitioner as also others, i.e. 8 candidates in all applied. Gurdeep Singh and Sukhwinder Singh withdrew their applications. After examining the applications on

merits. The Tehsildar, Mansa, recommended the petitioner's name for appointment as Lambardar. This recommendation was forwarded to the Sub Divisional Magistrate, Mansa, who concurred with the recommendation and forwarded the same to the District Collector, Mansa, the appointing authority. The District Collector, after considering the merits of the candidates, held that the petitioner was the most suitable candidate and accordingly vide order dated 16.2.2004 ordered his appointment,

Aggrieved by the aforementioned order, respondent no.4, filed an appeal before the Commissioner, Faridkot Division, Faridkot. Vide order dated 18.8.2004, the Commissioner, set aside the order of the Collector and remanded the matter for a decision, afresh. The Commissioner, held that the Collector had failed to consider the pleas that respondent no.4 had worked as a Sarbrah Lambardar for 15 years and that respondent no.4 was not a resident in the village, as he resided in Mansa town.

The petitioner, thereafter, filed a revision, before the Financial Commissioner, Appeals-I, Punjab. Vide order dated 30.5.2005, the Financial Commissioner dismissed the revision, but without setting aside the Commissioner's order appointed respondent no.4.

Counsel for the petitioner contends that the learned Financial Commissioner had no jurisdiction to appoint respondent no.4 as Lambardar, as respondent no.4 did not challenge the Commissioner's order remitting the dispute to the Collector. It is further argued that the Financial Commissioner, had no jurisdiction, to embark upon an appraisal of the merits of the candidates and select respondent no.4, as the choice of the Collector, as held by a large number of judgements of this Court as also a Division Bench of this Court in **Sarwan Kumar V. The Financial**

Commissioner, Appeals-I,Punjab and others, 2002(1) PLJ 406, is normally final. The Financial Commissioner and the Commissioner exceeded their jurisdiction by interfering with the choice of the Collector, the former directing appointment of respondent no.4 and the latter ordering remand, the impugned orders, being illegal and void be set aside. As a last resort, counsel for the petitioner, prays that in case the order of the learned Financial Commissioner is set aside, he would not press challenge to the order passed by the Commissioner.

Counsel for respondent no.4 contends that the order passed by the Financial Commissioner is just and valid. The Financial Commissioner, is empowered, by the suo-moto powers conferred by the Punjab Land Revenue Act, 1887, to summon the record of any case, pending before a revenue authority and pass orders, in respect thereof. The Financial Commissioner was, therefore, justifiably directed the appointment of respondentno.4. It is contended that as respondent no.4 was a better candidate than the petitioner, the Financial Commissioner, rightly directed his appointment.

We have heard learned counsel for the parties and perused the paper book.

A perusal of the record discloses that the Collector,directed appointment of the petitioner as the Lambardar. The Commissioner, set aside this order and directed the Collector, to consider the selection afresh. The petitioner impugned this order by way of a revision, before the Financial Commissioner arraying respondent no.4. as a respondent. Respondent no.4, however, did not file any revision impugning the Commissioner's order. The learned Financial Commissioner, therefore, in

utter disregard to the fact that respondent no.4 had not challenged the Commissioner's order, directed the appointment of respondent no.4 as a Lambardar.

In our considered opinion, the Financial Commissioner's order discloses a failure to exercise jurisdiction, in accordance with the provisions of the Punjab Land Revenue Act, 1887 (hereinafter referred to as `the Act'). Apart from ignoring the non filing of a revision by respondent no.4, the Financial Commissioner proceeded to assume the jurisdiction of a Collector and evaluate merits of candidates. The Act, confers a statutory duty upon a District Collector to select a candidate for the post of Lambardar. The choice of a Collector, as consistently held by this Court in a large number of judgements as also in **Sarwan Kumar's case (supra)** is generally final, unless shown to be vitiated, for lack of jurisdiction or is held to be arbitrary, unreasonable or capricious. Appellate and revisional authorities exercising jurisdiction, under the Act, must not re-evaluate the merits of respective candidates and then seek to impose their perception of the merits of a candidate. Any interpretation of the jurisdiction of appellate and revisional authorities other than the one assigned above would lead to judicial anarchy and never ending litigation.

The learned Financial Commissioner, appears to have erroneously arrogated to himself with jurisdiction of a Collector by proceeding to examine in great detail the merits of each candidate. While proceeding, thus, the Financial Commissioner, referred to the educational qualifications, opined as to the background of the parties, examined the claim put forth by respondent no.4 as to his status as a Sarbrah Lambardar from 1979 to 1992, referred to the extent of land owned by the petitioner

and the respondent no.4 and then proceeded to select respondent no.4. The Financial Commissioner, the final authority under the Act though cognizant of his jurisdiction, should have dwelled upon the limitations, attendant thereto. Not only did the Financial Commissioner, ignore the non filing of any revision by respondent no.4, he also proceeded to set aside the order of the Commissioner and select respondent no.4, on the plea that finality to such proceedings was necessary. It is true that finality to litigation is a laudable object but finality by assuming or appropriating jurisdiction, is an arbitrary and perverse application of the aforementioned principle. In the facts and circumstances of the present case, we are satisfied that the Financial Commissioner had no jurisdiction to select respondent no.4 for the post of Lambardar. In our considered opinion, the order passed by the Commissioner was just and valid and should, therefore, have been upheld by the Financial Commissioner.

Consequently, we set aside the order passed by the learned Commissioner dated 30.5.2005 and restore the order dated 18.8.2004 passed by the Commissioner, Faridkot Division, Faridkot. The Collector shall decide the matter afresh, in accordance with the directions issued by the Commissioner and shall make every effort to conclude proceedings, within a period of four months, from the date of receipt of certified copy of this order.

Before parting with the judgement, we would like to make it clear that the interim arrangement, with respect to the office of Lambardar, shall continue upto the passing of the order by the learned Collector.

Parties are directed to appear before the Collector on 4.6.2007.

The petition stands disposed of accordingly.

(RAJIVE BHALLA)
JUDGE

8.5.2007
GS

(P.SATHASIVAM)
JUDGE